



March 3, 2009

**VIA ELECTRONIC COMMENT FILING SYSTEM (ECFS)**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

**Re: PETITIONS FOR DECLARATORY RULING REGARDING PUBLIC,  
EDUCATIONAL, AND GOVERNMENTAL PROGRAMMING, CSR-8126,  
CSR-8127, CSR-8128, MB Docket No. 09-13**

Dear Ms. Dortch:

This *ex parte* notice is filed on behalf of the National Association of Telecommunications Officers and Advisors ("NATOa"). On March 3, 2009, NATOa, represented by Libby Beaty, NATOa Executive Director and John D. Russell, NATOa Government Relations Advisor met with Rick Chessen, Acting Chief of Staff to Acting Chairman Copps, to discuss the issues raised by the Petitions. Specifically, the parties discussed the nature of information the Commission hopes to receive as part of the record, along with specific concerns that exist regarding the treatment of PEG channels.

Pursuant to Commission rules, please include a copy of this notice in the record for the proceeding noted above.

Sincerely,  
*/s/ John D. Russell*  
John D. Russell  
Government Relations Advisor  
NATOa

cc: Rick Chessen, Acting Chief of Staff, Acting Chairman Copps



# Discrimination Against PEG

Ex Parte Presentation to Rick Chessen

March 3, 2009

# Overview

- Local government concerns with Comcast's movement of PEG channels from basic service tier to digital tier.
- Local government concerns regarding AT&T's "Channel 99" PEG product.

# Comcast and Digital Migration

- Comcast is seeking to take analog PEG channels, currently located with broadcast channels on the basic service tier, and move them to the digital tier.
- This causes consumer confusion in finding programming, increased equipment costs, and an effective rate increase.

# Proper Point-of-View

- The proper perspective is that of the consumer
  - Impact on navigability of channels and channel surfing habits of consumers
  - Absence or presence of additional consumer burdens to view a channel (equipment, costs)
  - Necessity for consumer to take additional affirmative steps to receive PEG channels considered part of basic service tier

# Discriminatory Treatment

- Comcast is discriminating against PEG channels by imposing costs and equipment requirements for the receipt of PEG channels that are not imposed on other channels in the basic service tier
  - Burden is placed on consumers to ask for equipment to access PEG channels that were otherwise part of the basic service tier.

# AT&T and Channel 99

- AT&T currently operates a PEG content aggregation service, called Channel 99, which uses a multi-step menu to guide users to their desired PEG content, which is then “streamed” to the consumer with quality and functionality that is markedly different from other channels.

# The Problem with PEG Aggregation

- As developed, Channel 99 does not provide PEG with “channels” or “channel capacity.”
- Video quality is lower than that of broadcast and commercial channels.
- Channel 99 does not pass through closed captioning or SAP audio as provided by the PEG operator.
- Only open captioning, which always appears on the consumer’s screen, is available to PEG programmers who offer captioning.



# Channel 99 Runs Afoul of the Act and FCC Rules and Regulations

- By failing to provide “channel capacity,” AT&T fails to comply with Section 611 of the Act, and also does not meet the requirements of a “channel” under Section 602(4) of the Act
- Currently, AT&T is exercising impermissible editorial control under Section 611(e) as the PEG content is being stripped of closed captioning and SAP functionality, with only open captioning available.
- By not passing through closed captioning, AT&T also violates Commission rule 76.606

# Next Steps

- Local governments seek to provide the Commission with current, accurate, and targeted information to assist the Commission in developing a complete record.
- Local governments seek to ensure that local content and information provided by PEG channels is preserved in this proceeding.

Link to video material provided as part of ex parte materials:  
[http://origin.peg.tv:3000/pegtv\\_player?affiliate=T00788](http://origin.peg.tv:3000/pegtv_player?affiliate=T00788)

Access the drag down menu, and select “PSAs”